IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 814 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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B B MEHTA

Versus

SAKARABHAI NAI & ORS

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Appearance :

MR DR BHATT for Appellant
MR PREMAL R JOSHI for Respondent No.1
MR HETAL A. SHAH for Respondent No.1
MR MD PANDYA for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 01/09/2005

ORAL JUDGMENT

1 This First Appeal is preferred against judgment and decree passed by learned Civil Judge (SD), Gandhinagar, in Special Civil Suit No. 104 of 1995 (Old Civil Suit No. 323 of 1989) by original

defendant No.1 against plaintiff – respondent No.1 herein and defendant No.2 – respondent No.2 herein.

2 Valuation of suit was fixed by the plaintiff at Rs. 1 lac and required court fees were paid.

3 With coming into force the Gujarat Civil Courts Act, 2005, on 9th of May, 2005, Appeals from the decrees and orders passed by the Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, would lie to the Court of District Judge of the District when the amount or value of the subject matter of the original suit or proceedings is less than Rs.5 lakhs or such other sum as the High Court may, from time to time, specify, according to Section 15(1)(a) of the said Act.

4 Vide Sub-section (4) of Section 15 of the Gujarat Civil Courts Act, 2005, these provisions would apply to all decrees and orders made after the appointed date irrespective of the fact that when the

suits or proceedings in which they are made were instituted before or after the appointed date. However, Section 30 of the said Act in respect of Repeal and Savings provides as under :

> 1. On and from the appointed date the Bombay Civil Courts Act, 1869 (Bom. XVI of 1869), in its application to the State of Gujarat, shall stand repealed.
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> 2. Such repeal shall not affect the previous operation of the enactment so repealed and anything done or any action taken including the districts, rules or orders made, functions assigned, powers granted, seals or forms prescribed, jurisdiction defined or vested and notifications or notices issued by or under the provisions of the said Act and deemed to have been done or taken under the provisions thereof shall, in so far as it is not inconsistent with the provisions of the Act and shall continue in force unless and until superseded by anything done or any action taken under this Act.
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> 3. Notwithstanding anything contained in sub-section (1) or any other provisions of this Act or in the enactment repealed by sub-section (1) or in any other law or provision having the force of law, all suits, appeals and proceedings connected therewith, pending before any court, which under this Act have to be instituted or connected in another court, shall, on the appointed day, stand transferred to such other court and shall be continued and disposed of by such other court in accordance with law as if such suit and proceedings had been instituted or commenced in such other court under this Act.
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> 4. If there be any doubt as to which court any suit, appeal or proceedings shall stand transferred or as to which court any appeal shall be preferred in accordance with the provisions of this Act the Court designated by the High Court shall be the court to which such suit, appeal or proceedings shall be transferred or such appeal shall be preferred, and the decision of the High Court shall be final.

> 5 Notwithstanding such repeal, the provisions of Section 7 of the Bombay General Clauses Act, 1904 shall apply in relation to the repeal of the Bombay Civil Courts Act, 1869 (Bom. 1 of 1869) as it the Act had been an enactment within the meaning of the said Section 7."

5 In the similar circumstances in the matter of JAYRANCHHOD PIYAT SAHARI MANDALI LTD vs. GUJARAT ELECTRICITY BOARD, (First Appeal No. 2820 of 2004) this Court (Coram: A.L.Dave, J.) vide order dated 12th of July, 2005, took a view that by virtue of Sub-Section (4) of Section 30 of the said Act, the effect of the provision was that an Appeal pending before this Court, subject of matter of which was valued at less than Rs. 5 lakhs, stands transferred to District Court if Appeal had arisen out of the judgment and decree of a Senior Civil Judge. The Court also discussed the effect of sub-section (4) of Section 15, in para 5.1 of the said order.

6 Undoubtedly, in the present appeal, the suit is valued at less than Rs. 5 lakhs and the appeal has arisen from the judgment and decree of a Senior Civil Judge.

7 In this view of matter, this First Appeal along with Civil Application No. 2018 of 2001 stand transferred to concerned Court of District Judge for disposal in accordance with law. The Registry shall take necessary steps immediately for transfer of this Appeal as well as Record and Proceedings of the Trial Court, if lying before this Court.

8 In pursuance of the order passed by this Court (Coram: D.P.Buch, J.) on 28th of February, 2001, in Civil Application No. 2018 of 2001, preferred in this First Appeal, an amount is invested in Fixed Deposit Receipt with the State Bank of India, Gujarat High Court, Ahmedabad, in the name of Registrar of High Court of Gujarat, initially for three years and thereafter in December 2004 the said FDR of Rs. 80,000/- is renewed for further three years, vide orders of this Court in Civil Application No. 2018 of 2001, passed on 7th of December, 2004 (Coram: A.M. Kapadia,J). Since the Fixed Deposit Receipt is renewed recently, the loss of interest is

likely to be suffered if the FDR is encashed prematurely. Therefore, this investment may remain as it is with the same terms and conditions including withdrawal of the interest by respondent No.1 original plaintiff, subject to any interim or final orders of the District Judge in this respect. However, any of the parties will be at liberty to file Civil Application if circumstances so demand for obtaining orders of this Court in respect of this investment till the Fixed Deposit Receipt is matured. Registry is further directed that if the Fixed Deposit Receipt is matured earlier than the disposal of the Appeal before the District Judge, the Registrar shall encash the FDR on maturity and shall remit the amount to the concerned District Court immediately which in turn shall pass necessary orders in this respect. On final disposal of the Appeal by the District Court, the said Court shall pass necessary orders in respect of this amount if the appeal is disposed of before the maturity of the said Fixed Deposit Receipt amount. Appeal stands disposed of accordingly. The Office Note placed in respect of

the said FDR also stands disposed of.

(J.R.VORA, J.)

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